

ALLEN MATKINS LECK GAMBLE MALLORY & NATSIS LLP
JAMES L. MEEDER (BAR NO. 62114)
ROBERT D. WYATT (BAR NO. 73240)
Three Embarcadero Center, 12th Floor
San Francisco, CA 94111-4074
Phone: (415) 837-1515
Fax: (415) 837-1516

Attorneys for Emhart Industries, Inc., Kwikset Locks,
Inc., Kwikset Corporation, Black & Decker (U.S.)
Inc., and Black & Decker Inc.

**BEFORE THE CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD**

EMHART INDUSTRIES, INC.,
KWIKSET LOCKS, INC., KWIKSET
CORPORATION, BLACK & DECKER
(U.S.) INC., AND BLACK & DECKER
INC.

Petitioners,

vs.

REGIONAL WATER QUALITY
CONTROL BOARD, SANTA ANA
REGION,

Respondent,

GERALD J. THIBEAULT, EXECUTIVE
OFFICER OF THE SANTA ANA
REGIONAL WATER QUALITY
CONTROL BOARD,

Real Party in Interest.

SWRCB/OCC Files A-1732, A-1732(a), A-
1732(b), A-1732(c), and A-1732(d)

(On Petition Challenging Amended CAO No.
R8-2005-0053 Issued by the Santa Ana
Regional Water Quality Control Board)

**AMENDED JOINT PETITION FOR
REVIEW-PARTS A, B, C, AND D**

TABLE OF CONTENTS

| | | |
|------|---|---|
| I. | PETITIONERS | 1 |
| II. | RESPONDENT AND REAL PARTY IN INTEREST | 1 |
| III. | ALLEGATIONS-PART A..... | 1 |
| IV. | ALLEGATIONS-PART B..... | 2 |
| V. | ALLEGATIONS-PART C..... | 3 |
| VI. | ALLEGATIONS-PART D..... | 4 |
| VII. | PRAYER | 5 |

I. PETITIONERS

1. Petitioners Emhart Industries, Inc. ("Emhart"), Kwikset Locks, Inc. ("KLI"), Kwikset Corporation ("Kwikset"), Black & Decker (U.S.) Inc., and Black & Decker Inc. (collectively "Petitioners") reopen their Petitions to the State Water Resources Control Board ("State Board") challenging Cleanup and Abatement Order R8-2005-0053 issued by the Executive Officer of the Santa Ana Regional Water Quality Control Board on February 28, 2005, as amended on December 2, 2005 ("2005 CAO").

II. RESPONDENT AND REAL PARTY IN INTEREST

2. The Respondent is the Regional Water Quality Control Board, Santa Ana Region ("Regional Board" or "Board").

3. The Real Party in Interest is Gerald J. Thibeault, Executive Officer of the Regional Board.

III. ALLEGATIONS-PART A (State Board Hearing on the Merits of the 2005 CAO and Its Rescission)

4. Petitioner Emhart hereby incorporates the allegations set forth in its Amended Petition dated December 29, 2005, which is attached hereto as Exhibit A.

5. Petitioner KLI hereby incorporates the allegations set forth in its Petition dated December 29, 2005, which is attached hereto as Exhibit B.

6. Petitioner Kwikset hereby incorporates the allegations set forth in its Amended Petition dated December 29, 2005, which is attached hereto as Exhibit C.

7. Petitioner Black & Decker (U.S.) Inc. hereby incorporates the allegations set forth in its Amended Petition dated December 29, 2005, which is attached hereto as Exhibit D.

8. Petitioner Black & Decker, Inc. hereby incorporates the allegations set forth in its Amended Petition dated December 29, 2005, which is attached hereto as Exhibit E.

Wherefore, Petitioners pray for a hearing on the merits of this Petition before the State Board and order rescinding the 2005 CAO as set forth in detail in the Prayer below.

IV. ALLEGATIONS-PART B
(Disqualification of the Regional Board And Immediate Stay of Its Adjudication of the 2005 CAO)

9. The Regional Board, its Executive and Assistant Executive Officers, its legal counsel, its technical staff, and the Office of Chief Counsel of the State Board have been engaged for almost four years in ongoing proceedings involving the identification, investigation, prosecution, and adjudication of the responsibility of suspected dischargers in connection with the discovery of perchlorate in the Rialto/Colton Groundwater Basin.

10. Specifically, with regard to Petitioners, Regional Board Executive Officer Thibeault has issued three enforcement orders and an administrative civil liability complaint in these ongoing proceedings, all of which were based on the same factual allegations and legal theories that the Board has announced it will adjudicate in connection with the 2005 CAO. The enforcement orders and administrative civil liability complaint issued by the Regional Board's Executive Officer in this ongoing proceeding include: CAO R8-2002-0051 issued to Kwikset, dated June 6, 2002; Water Code Section 13267 order issued to Emhart, dated October 23, 2002; Resolution R8-2003-0070, dated May 16, 2003; ACL Complaint R8-2003-0096 issued to Emhart, dated October 23, 2003; and the 2005 CAO.

11. As set forth in detail in the separate Amended Joint Petition-Part B, the prosecution team for the 2005 CAO has acted as the Board's advisers in these ongoing proceedings, related proceedings, and all other unrelated Board proceedings, thereby creating a clear appearance of bias and unfairness, if not establishing actual bias, against Petitioners.

12. As set forth in detail in the separate Amended Joint Petition-Part B, the words and actions of the Board, some of its members, and its staff during these ongoing proceedings regarding Petitioners have created a clear appearance of bias and unfairness, if not established actual bias, against Petitioners which require the disqualification of

the Regional Board from adjudicating the factual and legal issues alleged in the 2005 CAO.

13. As set forth in detail in the separate Amended Joint Petition-Part B, the actions of the Board, its members, and staff violate Petitioners' rights guaranteed by the Due Process Clause of the California Constitution, Art. 1, section 7, the Fourteenth Amendment to the United States Constitution, and the California Administrative Procedure Act ("APA"), Gov. Code §§ 11400 *et seq.*

14. As set forth in detail in the separate Amended Joint Petition-Part B, Petitioners seek an immediate stay, pursuant to 23 Cal. Code Regs. § 2053, of the Regional Board's adjudication of the factual and legal allegations in the 2005 CAO, the first phase of which is set to commence on July 17 and 18, 2006.

Wherefore, Petitioners pray for the disqualification of the Board from adjudicating the factual and legal allegations in the 2005 CAO and immediate stay as set forth in detail in the Prayer below.

V. ALLEGATIONS-PART C (Regional Board Communications)

15. As set forth in detail in the separate Amended Joint Petition-Part B, significant questions have arisen regarding the Regional Board's violation of Petitioners' rights guaranteed by the Due Process Clause of the California Constitution, Art. 1, section 7, the Fourteenth Amendment to the United States Constitution, and the California Administrative Procedure Act ("APA"), Gov. Code §§ 11400 *et seq.* These questions arise as the result of the appointment of the Board's regular legal counsel, its senior staff advisory personnel, and most of its technical staff as the "prosecution" team for the hearing on the 2005 CAO, despite the fact that these officials have (a) advised the Board on the very disputes and issues that they are assigned to prosecute, (b) acted, and are simultaneously acting, as the Board's advisers in the same and factually related proceedings, and (c) regularly acted as the Board's advisers in unrelated proceedings that come before the Board.

16. Thus, it is necessary that the Executive Officer of Regional Board include in the administrative record for this Amended Joint Petition, as a separate compilation, all communications between, on the one hand, the members of the 2005 CAO "Advocacy Team" as designated on October 17, 2005, by the Chair of the Regional Board and, on the other, the members of the Regional Board, its "Advisory Team" for the 2005 CAO regarding Petitioners since June 6, 2002, in connection with the following orders and complaints issued by the Regional Board's Executive Officer: CAO R8-2002-0051, dated June 6, 2002; Water Code Section 13267 order issued to Emhart, dated October 23, 2002; Resolution R8-2003-0070, dated May 16, 2003; ACL Complaint R8-2003-0096, dated October 23, 2003; and the 2005 CAO.

17. It is also necessary that the Executive Officer include all communications between third-parties, on the one hand, and, members of the Regional Board and/or members of the "Advisory Team," on the other, since June 6, 2002 regarding Petitioners.

18. The information identified in paragraphs 13 and 14, above, is relevant to the State Board's hearing on and determination of the question whether the Regional Board should be disqualified from adjudicating the factual and legal allegations in the 2005 CAO, as required by due process, the APA, Gov. Code § 11425.40 and § 11425.10(4), *Nightlife Partners, Ltd. v. City of Beverly Hills* (2003) 108 Cal.App.4th 81, 90-94, and *Quintero v. City of Santa Ana et al.* (2003) 114 Cal.App.4th 810, 817.

Wherefore, Petitioners pray for an order from the State Board so directing the Executive Officer of the Regional Board as set forth in detail in the Prayer below.

VI. ALLEGATIONS-PART D (Office of Chief Counsel Separation of Functions)

19. As set forth in detail in the separate Amended Joint Petition-Part B, significant questions also have arisen regarding whether at all times herein relevant the Office of Chief Counsel has kept separate its advisory, prosecutory, and investigatory functions in connection with the following orders and complaints issued by the Regional Board's Executive Officer and related appeals to the State Board: CAO R8-2002-0051, dated June

6, 2002; Water Code Section 13267 order issued to Emhart, dated October 23, 2002; Resolution R8-2003-0070, dated May 16, 2003; ACL Complaint R8-2003-0096, dated October 23, 2003; and the 2005 CAO.

20. It is the burden of the Office of Chief Counsel to demonstrate that its employees have at all times relevant kept separate their advisory, prosecutory, and investigatory functions as required by due process. *Howitt. v. Superior Court* (1992) 3 Cal.App.4th 1575, 1586-1587.

Wherefore, Petitioners pray for an order from the State Board directing the Office of Chief Counsel to demonstrate how it has kept separate its functions in these ongoing proceedings as set forth in detail in the Prayer below.

VII. PRAYER

1. With Regard to Amended Joint Petition-Part A, Petitioners pray that:

(a) The State Board consolidate in a single proceeding the separate Petitions filed by Petitioners,

(b) The State Board hold a pre-hearing conference to set a schedule for pre-hearing discovery, pre-hearing dispositive motions, and the hearing on the merits;

(c) The State Board adjudicate at an evidentiary hearing the merits of the 2005 CAO; and

(d) The State Board rescind the 2005 CAO.

2. With regard to Amended Joint Petition-Part B, Petitioners pray that:

(a) The State Board issue, pursuant to 22 Cal. Code Regs. § 2053, an immediate stay of the Regional Board's adjudicatory proceedings of the 2005 CAO, the first phase of which is set for hearing on July 17 and 18, 2006;

(b) The State Board adjudicate at an evidentiary hearing whether the Regional Board should be disqualified from adjudicating the factual and legal allegations in the 2005 CAO; and

(c) The State Board disqualify the Regional Board from adjudicating the factual and legal allegations in the 2005 CAO.

3. With regard to Amended Joint Petition-Part C, Petitioners pray that:

(a) The State Board direct the Executive Officer of the Regional Board to prepare the administrative record;

(b) The State Board direct the Executive Officer of the Regional Board to prepare, as part of the administrative, record, a separate compilation of all communications regarding Petitioners between, the members of the 2005 CAO "Advocacy Team" as designated on October 17, 2005, by the Chair of the Regional Board, on the one hand, and the members of the Regional Board, its "Advisory Team" for the 2005 CAO, and third parties, on the other, since June 6, 2002, in connection with the following orders and complaints issued by the Regional Board's Executive Officer: CAO R8-2002-0051, dated June 6, 2002; Water Code Section 13267 order issued to Emhart, dated October 23, 2002; Resolution R8-2003-0070, dated May 16, 2003; ACL Complaint R8-2003-0096, dated October 23, 2003; and the 2005 CAO, dated February 28, 2005;

(c) The State Board direct the Executive Officer of the Regional Board to prepare, as part of the administrative record, a compilation of all communications between third-parties, on the one hand, and members of the Regional Board and/or members of the "Advisory Team," on the other, since June 6, 2002 regarding Petitioners and the above referenced orders and complaints.

(d) The State Board direct the Executive Officer of the Regional Board to prepare the compilation of communications identified in (b) and (c) above no later than June 7, 2006, so that they can be part of the administrative record in the State Board's proceeding on the request to disqualify the Regional Board.

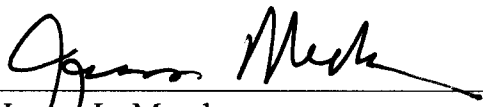
4. With regard to Amended Joint Petition-Part D, Petitioners pray that the State Board direct its Office of Chief Counsel to demonstrate that its employees assigned to advise the Regional Board and State Board have at all pertinent times kept their advisory, prosecutory, and investigatory functions separate within the Office of Chief Counsel in

connection with the following orders and complaints issued by the Regional Board's Executive Officer and related appeals to the State Board: CAO R8-2002-0051, dated June 6, 2002; Water Code Section 13267 order issued to Emhart, dated October 23, 2002; Resolution R8-2003-0070, dated May 16, 2003; ACL Complaint R8-2003-0096, dated October 23, 2003; and the 2005 CAO

5. Finally, Petitioners pray for such other relief that the State Board may deem just and proper.

Dated: May 26, 2006

Respectfully submitted

By: 
James L. Meeder
Counsel for Petitioners

ALLEN MATKINS LECK GAMBLE & MALLORY LLP
ROBERT D. WYATT (SBN 73240)
JAMES L. MEEDER (SBN 62114)
HENRY LERNER (SBN 077166)
Three Embarcadero Center, 12th Floor
San Francisco, California 94111
Telephone: (415) 837-1515
Facsimile: (415) 837-1516

Attorneys for Petitioner
EMHART INDUSTRIES, INC.

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

In the Matter of Cleanup and Abatement Order
No. R8-2005-0053, as Amended

AMENDED PETITION FOR REVIEW

Emhart Industries, Inc., a dissolved Connecticut corporation ("Petitioner"), hereby files this amended petition for review and request for a hearing by the State Water Resources Control Board ("State Board") of that certain Amended Cleanup and Abatement Order No. R8-2005-0053 ("Amended Order") issued on December 2, 2005 by the Executive Officer of the California Regional Water Quality Control Board, Santa Ana Region, ("Regional Board"). This amended petition for review is filed pursuant to the United States Constitution, the California Constitution, Water Code § 13320 and 23 CCR §§ 2050 et. seq. A copy of the Amended Order and letter of transmittal are attached hereto as Exhibit A.

Petitioner reserves its right to seek a stay of the Amended Order by the State Board.

I. Name and Address of Petitioner

Petitioner can be contacted through its counsel of record.

II. The Regional Board Action for Which This Petition For Review is Sought

The Regional Board action for which this petition is filed is the issuance of a document labeled "Amended Cleanup and Abatement Order No. R8-2005-0053" dated December 2, 2005 and served on Petitioner on December 2, 2005 by the Executive Officer.

III. The Date the Regional Board Acted.

The date of the Regional Board Executive Officer's issuance of the Amended Order is December 2, 2005.

IV. Statement of the Reasons the Action is Inappropriate and Improper.

A. The Order is barred by the doctrine of collateral estoppel and res judicata by virtue of Regional Board Resolution No. R8-2003-0070 dated May 16, 2003 in the matter of Cleanup and Abatement Order No. R8-2002-0051.

B. As regards petitioner Emhart Industries, Inc., the Executive Officer failed to comply with the claims requirement of the Connecticut Business Corporations Code Act § 33-887.

C. The "findings of fact" set forth in the December 2, 2005 Amended Order are contrary to the evidence based upon a preponderance of the evidence in the record.

D. Emhart Industries, Inc. is not a "corporate successor" to the alleged liabilities of West Coast Loading Corporation and/or of Kwikset Locks Inc. and/or Kwikset Corporation and/or Black & Decker (U.S.), Inc.

E. Water Code §§ 13267 and 13304 may not be applied retroactively to parties which ceased to exist prior to those statutes' enactment.

F. The Amended Order is arbitrary and capricious in that it seeks to impose upon a single entity investigative, cleanup and abatement and alternative water supply obligations for actions or failures to act by multiple parties as evidenced by the Regional Board's administrative record.

G. Petitioner does not now have nor has it ever had a possessory interest in the property which is the subject of the Amended Order and thus has no right, power or duty to conduct the actions required by the Amended Order.

H. The Order is subject to a Plea in Abatement in that the gravamen of the Amended Order, i.e., (a) whether West Coast Loading Corporation ("WCLC") discharged perchlorate to waters of the state, and, if so, (b) whether Petitioner is a "successor" to WCLC for such alleged liability at present the subject of litigation, including consolidated cases pending in the U.S. District Court, Central District of California, Eastern Division, in Riverside, California. (*City of Rialto v. U. S. Department of Defense, et al.*, Case No. 04cv00079.)

I. On February 10, 2005, Emhart Industries, Inc. provided Regional Board staff a Field Investigation Report prepared by ENVIRON International at the request of USEPA and in consultation with Regional Board staff which concludes the former WCLC facility is not a source of potassium perchlorate contamination in the Rialto/Colton groundwater basin.

J. The Regional Board has not conducted an evidentiary hearing complying with minimal constitutional due process requirements on the allegations set forth in the Amended Order.

V. Petitioner is Aggrieved.

Petitioner is aggrieved for the reasons set forth in paragraphs III and IV above.

VI. Petitioner's Requested Action by the State Board.

Petitioner respectfully requests that the State Board provide a full and impartial evidentiary hearing on the Amended Order pursuant to the United States Constitution, the California Constitution, Water Code § 13320, 23 CCR § 648 et seq. and Government Code § 11400 et. seq., after full opportunity for discovery, and rescind the Amended Order. This petition for review and request for hearing is requested to be held in abeyance by the State Board pending further actions, if any, by the Executive Officer or the Regional Board.

VII. Statement of Points and Authorities.

Petitioner will provide a detailed statement of points and authorities in the event the Executive Officer or the Regional Board take further action which necessitate Petitioner requesting the State Board to convert this petition to active status.

VIII. List of Interested Persons.

A list of "interested persons" is attached to the Amended Order attached here to as Exhibit A.

IX. Statement of Transmittal of Petition to the Regional Board.

A copy of this amended petition has been transmitted to the Executive Officer of the Regional Board on December 29, 2005.

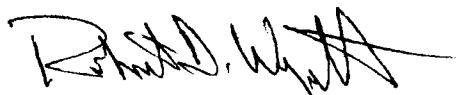
X. Request to Regional Board for Preparation of the Administrative Record.

By copy of this amended petition to the Executive Officer of the Regional Board, Petitioner hereby requests the preparation of the administrative record herein.

Respectfully submitted,

Date: December 29, 2005

by:



Robert D. Wyatt
Allen Matkins Leck Gamble & Mallory
Attorneys for Petitioner Emhart Industries,
Inc.

ALLEN MATKINS LECK GAMBLE & MALLORY LLP
ROBERT D. WYATT (SBN 73240)
JAMES L. MEEDER (SBN 62114)
HENRY LERNER (SBN 077166)
Three Embarcadero Center, 12th Floor
San Francisco, California 94111
Telephone: (415) 837-1515
Facsimile: (415) 837-1516

Attorneys for Petitioner
KWIKSET LOCKS, INC.

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

In the Matter of Cleanup and Abatement Order
No. R8-2005-0053, as Amended

PETITION FOR REVIEW

Kwikset Locks, Inc., a dissolved California corporation, ("Petitioner") hereby files this petition for review and request for a hearing by the State Water Resources Control Board ("State Board") of that certain Amended Cleanup and Abatement Order No. R8-2005-0053 ("Amended Order") issued on December 2, 2005 by the Executive Officer of the California Regional Water Quality Control Board, Santa Ana Region, ("Regional Board"). This petition for review is filed pursuant to the United States Constitution, the California Constitution, Water Code § 13320 and 23 CCR §§ 2050 et. seq. A copy of the Amended Order and letter of transmittal are attached hereto as Exhibit A.

Petitioner reserves its right to seek a stay of the Amended Order by the State Board.

I. Name and Address of Petitioner

Petitioner can be contacted through its counsel of record.

II. The Regional Board Action for Which This Petition For Review is Sought

The Regional Board action for which this petition is filed is the issuance of a document labeled "Amended Cleanup and Abatement Order No. R8-2005-0053" dated December 2, 2005 and served on Petitioner on December 2, 2005 by the Executive Officer.

III. The Date the Regional Board Acted.

The date of the Regional Board Executive Officer's issuance of the Amended Order is December 2, 2005.

IV. Statement of the Reasons the Action is Inappropriate and Improper.

A. The Order is barred by the doctrine of collateral estoppel and res judicata by virtue of Regional Board Resolution No. R8-2003-0070 dated May 16, 2003 in the matter of Cleanup and Abatement Order No. R8-2002-0051.

B. As regards separate petitioner Emhart Industries, Inc., the Executive Officer failed to comply with the claims requirement of the Connecticut Business Corporations Code Act § 33-887.

C. The "findings of fact" set forth in the December 2, 2005 Amended Order are contrary to the evidence based upon a preponderance of the evidence in the record.

D. Water Code Sections 13267 and 13304 may not be applied retroactively to parties which ceased to exist prior to those statutes' enactment.

E. The Amended Order is arbitrary and capricious in that it seeks to impose upon a single entity investigative cleanup and abatement and alternative water supply obligations for actions or failures to act by multiple parties as evidenced by the Regional Board's administrative record.

F. Petitioner does not have a possessory interest in the property which is the subject of the Amended Order and thus has no right, power or duty to conduct the actions required by the Amended Order.

G. The Order is subject to a Plea in Abatement in that the gravamen of the Amended Order, i.e., (a) whether West Coast Loading Corporation ("WCLC") discharged perchlorate to waters of the state, and, if so, (b) whether Petitioner is a "successor" to WCLC for such alleged liability is at present the subject of litigation, including consolidated cases pending in the U.S. District Court, Central District of California, Eastern Division, in Riverside, California. (*City of Rialto v. U. S. Department of Defense, et al.*, Case No. 04cv00079.)

H. On February 10, 2005, Emhart Industries, Inc. provided Regional Board staff a Field Investigation Report prepared by ENVIRON International at the request of USEPA and in consultation with Regional Board staff which concludes the former WCLC facility is not a source of contamination in the Rialto/Colton groundwater basin.

I. The Regional Board has not conducted an evidentiary hearing complying with minimal constitutional due process requirements on the allegations set forth in the Amended Order.

V. Petitioner is Aggrieved.

Petitioner is aggrieved for the reasons set forth in paragraphs III and IV above.

VI. Petitioner's Requested Action by the State Board.

Petitioner respectfully requests that the State Board provide a full and impartial evidentiary hearing on the Amended Order pursuant to the United States Constitution, the California Constitution, Water Code § 13320, 23 CCR § 648 et seq. and Government Code § 11400 et. seq., after full opportunity for discovery, and rescind the Amended Order. This petition for review and request for hearing is requested to be held in abeyance by the State Board pending further actions, if any, by the Executive Officer or the Regional Board.

VII. Statement of Points and Authorities.

Petitioner will provide a detailed statement of points and authorities in the event the Executive Officer or the Regional Board take further action which necessitate Petitioner requesting the State Board to convert this petition to active status.

VIII. List of Interested Persons.

A list of "interested persons" is attached to the Amended Order attached here to as Exhibit A.

IX. Statement of Transmittal of Petition to the Regional Board.

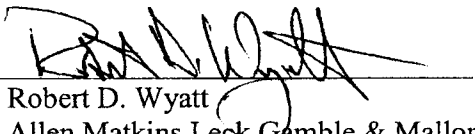
A copy of this petition has been transmitted to the Executive Officer of the Regional Board on December 29, 2005.

X. Request to Regional Board for Preparation of the Administrative Record.

By copy of this amended petition to the Executive Officer of the Regional Board, Petitioner hereby requests the preparation of the administrative record herein.

Respectfully submitted,

Date: December 29, 2005

by: 
Robert D. Wyatt
Allen Matkins Leck Gamble & Mallory
Attorneys for Petitioner Kwikset Locks, Inc.

cc: Gerard J. Thibeault, Executive Officer, RWQCB, Region 8
Jorge A. Leon, Esq., OCC, SWRCB

ALLEN MATKINS LECK GAMBLE & MALLORY LLP
ROBERT D. WYATT (SBN 73240)
JAMES L. MEEDER (SBN 62114)
HENRY LERNER (SBN 077166)
Three Embarcadero Center, 12th Floor
San Francisco, California 94111
Telephone: (415) 837-1515
Facsimile: (415) 837-1516

Attorneys for Petitioner
KWIKSET CORPORATION

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

In the Matter of Cleanup and Abatement Order
No. R8-2005-0053, as Amended

PETITION FOR REVIEW

Kwikset Corporation, ("Petitioner") hereby files this petition for review and request for a hearing by the State Water Resources Control Board ("State Board") of that certain Amended Cleanup and Abatement Order No. R8-2005-0053 ("Amended Order") issued on December 2, 2005 by the Executive Officer of the California Regional Water Quality Control Board, Santa Ana Region, ("Regional Board"). This petition for review is filed pursuant to the United States Constitution, the California Constitution, Water Code § 13320 and 23 CCR §§ 2050 et. seq. A copy of the Amended Order and letter of transmittal are attached hereto as Exhibit A.

Petitioner reserves its right to seek a stay of the Amended Order by the State Board.

I. Name and Address of Petitioner

Petitioner can be contacted through its counsel of record.

II. The Regional Board Action for Which This Petition For Review is Sought

The Regional Board action for which this petition is filed is the issuance of a document labeled "Amended Cleanup and Abatement Order No. R8-2005-0053" dated December 2, 2005 and served on Petitioner on December 2, 2005 by the Executive Officer. That Amended Order adds Kwikset Corporation as an alleged discharger.

III. The Date the Regional Board Acted.

The date of the Regional Board Executive Officer's issuance of the Amended Order is December 2, 2005.

IV. Statement of the Reasons the Action is Inappropriate and Improper.

A. The Order is barred by the doctrine of collateral estoppel and res judicata by virtue of Regional Board Resolution No. R8-2003-0070 dated May 16, 2003 in the matter of Cleanup and Abatement Order No. R8-2002-0051.

B. As regards petitioner Emhart Industries, Inc., the Executive Officer failed to comply with the claims requirement of the Connecticut Business Corporations Code Act § 33-887.

C. The "findings of fact" set forth in the December 2, 2005 Amended Order are contrary to the evidence based upon a preponderance of the evidence in the record.

D. Kwikset Corporation is not a "corporate successor" to the alleged liabilities of West Coast Loading Corporation and/or of Kwikset Locks Inc.

E. Water Code §§ 13267 and 13304 may not be applied retroactively to parties which ceased to exist prior to those statutes' enactment.

F. The Amended Order is arbitrary and capricious in that it seeks to impose upon a single entity investigative, cleanup and abatement and alternative water supply obligations for actions or failures to act by multiple parties as evidenced by the Regional Board's administrative record.

G. Petitioner does not now have nor has it ever had a possessory interest in the property which is the subject of the Amended Order and thus has no right, power or duty to conduct the actions required by the Amended Order.

H. The Order is subject to a Plea in Abatement in that the gravamen of the Amended Order, i.e., (a) whether West Coast Loading Corporation ("WCLC") discharged perchlorate to waters of the state, and, if so, (b) whether Petitioner is a "successor" to WCLC for such alleged liability is as present the subject of litigation, including consolidated cases pending in the U.S. District Court, Central District of California, Eastern Division, in Riverside, California. (*City of Rialto v. U. S. Department of Defense, et al.*, Case No. 04cv00079.)

I. On February 10, 2005, Emhart Industries, Inc. provided Regional Board staff a Field Investigation Report prepared by ENVIRON International at the request of USEPA and in consultation with Regional Board staff which concludes the former WCLC facility is not a source of contamination in the Rialto/Colton groundwater basin.

J. The Regional Board has not conducted an evidentiary hearing complying with minimal constitutional due process requirements on the allegations set forth in the Amended Order.

V. Petitioner is Aggrieved.

Petitioner is aggrieved for the reasons set forth in paragraphs III and IV above.

VI. Petitioner's Requested Action by the State Board.

Petitioner respectfully requests that the State Board provide a full and impartial evidentiary hearing on the Amended Order pursuant to the United States Constitution, the California Constitution, Water Code § 13320, 23 CCR § 648 et seq. and Government Code § 11400 et. seq., after full opportunity for discovery, and rescind the Amended Order. This petition for review and request for hearing is requested to be held in abeyance by the State Board pending further actions, if any, by the Executive Officer or the Regional Board.

VII. Statement of Points and Authorities.

Petitioner will provide a detailed statement of points and authorities in the event the Executive Officer or the Regional Board take further action which necessitate Petitioner requesting the State Board to convert this petition to active status.

VIII. List of Interested Persons.

A list of "interested persons" is attached to the Amended Order attached here to as Exhibit A.

IX. Statement of Transmittal of Petition to the Regional Board.

A copy of this petition has been transmitted to the Executive Officer of the Regional Board on December 29, 2005.

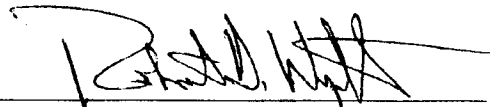
X. Request to Regional Board for Preparation of the Administrative Record.

By copy of this petition to the Executive Officer of the Regional Board, Petitioner hereby requests the preparation of the administrative record herein.

Respectfully submitted,

Date: December 29, 2005

by:



Robert D. Wyatt
Allen Matkins Leck Gamble & Mallory
Attorneys for Petitioner Kwikset Corporation

cc: Gerard J. Thibeault, Executive Officer, RWQCB, Region 8
Jorge A. Leon, Esq., OCC, SWRCB

ALLEN MATKINS LECK GAMBLE & MALLORY LLP
ROBERT D. WYATT (SBN 73240)
JAMES L. MEEDER (SBN 62114)
HENRY LERNER (SBN 077166)
Three Embarcadero Center, 12th Floor
San Francisco, California 94111
Telephone: (415) 837-1515
Facsimile: (415) 837-1516

Attorneys for Petitioner
BLACK & DECKER (U.S.), INC.

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

In the Matter of Cleanup and Abatement Order
No. R8-2005-0053, as Amended

PETITION FOR REVIEW

Black & Decker (U.S.), Inc. ("Petitioner") hereby files this amended petition for review and request for a hearing by the State Water Resources Control Board ("State Board") of that certain Amended Cleanup and Abatement Order No. R8-2005-0053 ("Amended Order") issued on December 2, 2005 by the Executive Officer of the California Regional Water Quality Control Board, Santa Ana Region, ("Regional Board"). This amended petition for review is filed pursuant to the United States Constitution, the California Constitution, Water Code § 13320 and 23 CCR §§ 2050 et. seq. A copy of the Amended Order and letter of transmittal are attached hereto as Exhibit A.

Petitioner reserves its right to seek a stay of the Amended Order by the State Board.

I. Name and Address of Petitioner

Petitioner can be contacted through its counsel of record.

II. The Regional Board Action for Which This Petition For Review is Sought

The Regional Board action for which this petition is filed is the issuance of a document labeled "Amended Cleanup and Abatement Order No. R8-2005-0053" dated December 2, 2005 and served on Petitioner on December 2, 2005 by the Executive Officer.

III. The Date the Regional Board Acted.

The date of the Regional Board Executive Officer's issuance of the Amended Order is December 2, 2005.

IV. Statement of the Reasons the Action is Inappropriate and Improper.

A. The Order is barred by the doctrine of collateral estoppel and res judicata by virtue of Regional Board Resolution No. R8-2003-0070 dated May 16, 2003 in the matter of Cleanup and Abatement Order No. R8-2002-0051.

B. As regards separate petitioner Emhart Industries, Inc., the Executive Officer failed to comply with the claims requirement of the Connecticut Business Corporations Code Act § 33-887.

C. The "findings of fact" set forth in the December 2, 2005 Amended Order are contrary to the evidence based upon a preponderance of the evidence in the record.

D. Black & Decker (U.S.), Inc. is not a "corporate successor" to the alleged liabilities of West Coast Loading Corporation and/or of Kwikset Locks Inc. and/or Kwikset Corporation and/or Emhart Industries, Inc.

E. Water Code §§ 13267 and 13304 may not be applied retroactively to parties which ceased to exist prior to those statutes' enactment.

F. The Amended Order is arbitrary and capricious in that it seeks to impose upon a single entity investigative, cleanup and abatement and alternative water supply obligations for actions or failures to act by multiple parties as evidenced by the Regional Board's administrative record.

G. Petitioner does not now have nor has it ever had a possessory interest in the property which is the subject of the Amended Order and thus has no right, power or duty to conduct the actions required by the Amended Order.

H. The Order is subject to a Plea in Abatement in that the gravamen of the Amended Order, i.e., (a) whether West Coast Loading Corporation ("WCLC") discharged perchlorate to waters of the state, and, if so, (b) whether Petitioner is a "successor" to WCLC for such alleged liability is at present the subject of litigation, including consolidated cases pending in the U.S. District Court, Central District of California, Eastern Division, in Riverside, California. (*City of Rialto v. U. S. Department of Defense, et al.*, Case No. 04cv00079.)

I. On February 10, 2005, Emhart Industries, Inc. provided Regional Board staff a Field Investigation Report prepared by ENVIRON International at the request of USEPA and in consultation with Regional Board staff which concludes the former WCLC facility is not a source of contamination in the Rialto/Colton groundwater basin.

J. The Regional Board has not conducted an evidentiary hearing complying with minimal constitutional due process requirements on the allegations set forth in the Amended Order.

V. Petitioner is Aggrieved.

Petitioner is aggrieved for the reasons set forth in paragraphs III and IV above.

VI. Petitioner's Requested Action by the State Board.

Petitioner respectfully requests that the State Board provide a full and impartial evidentiary hearing on the Amended Order pursuant to the United States Constitution, the California Constitution, Water Code § 13320, 23 CCR § 648 et seq. and Government Code § 11400 et. seq., after full opportunity for discovery, and rescind the Amended Order. This petition for review and request for hearing is requested to be held in abeyance by the State Board pending further actions, if any, by the Executive Officer or the Regional Board.

VII. Statement of Points and Authorities.

Petitioner will provide a detailed statement of points and authorities in the event the Executive Officer or the Regional Board take further action which necessitate Petitioner requesting the State Board to convert this petition to active status.

VIII. List of Interested Persons.

A list of "interested persons" is attached to the Amended Order attached here to as Exhibit A.

IX. Statement of Transmittal of Petition to the Regional Board.

A copy of this amended petition has been transmitted to the Executive Officer of the Regional Board on December 29, 2005.

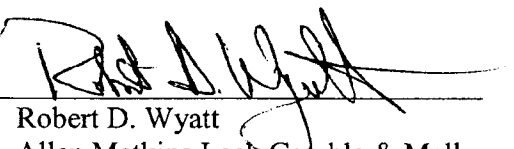
X. Request to Regional Board for Preparation of the Administrative Record.

By copy of this amended petition to the Executive Officer of the Regional Board, Petitioner hereby requests the preparation of the administrative record herein.

Respectfully submitted,

Date: December 29, 2005

by:


Robert D. Wyatt
Allen Matkins Leck Gamble & Mallory
Attorneys for Petitioner Black & Decker
(U.S.) Inc.

ALLEN MATKINS LECK GAMBLE & MALLORY LLP
ROBERT D. WYATT (SBN 73240)
JAMES L. MEEDER (SBN 62114)
HENRY LERNER (SBN 077166)
Three Embarcadero Center, 12th Floor
San Francisco, California 94111
Telephone: (415) 837-1515
Facsimile: (415) 837-1516

Attorneys for Petitioner
BLACK & DECKER INC..

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

In the Matter of Cleanup and Abatement Order
No. R8-2005-0053, as Amended

PETITION FOR REVIEW

Black & Decker Inc. ("Petitioner") hereby files this petition for review and request for a hearing by the State Water Resources Control Board ("State Board") of that certain Amended Cleanup and Abatement Order No. R8-2005-0053 ("Amended Order") issued on December 2, 2005 by the Executive Officer of the California Regional Water Quality Control Board, Santa Ana Region, ("Regional Board"). This petition for review is filed pursuant to the United States Constitution, the California Constitution, Water Code § 13320 and 23 CCR §§ 2050 et. seq. A copy of the Amended Order and letter of transmittal are attached hereto as Exhibit A.

Petitioner reserves its right to seek a stay of the Amended Order by the State Board.

I. Name and Address of Petitioner

Petitioner can be contacted through its counsel of record.

II. The Regional Board Action for Which This Petition For Review is Sought

The Regional Board action for which this petition is filed is the issuance of a document labeled "Amended Cleanup and Abatement Order No. R8-2005-0053" dated December 2, 2005 and served on Petitioner on December 2, 2005 by the Executive Officer. That Amended Order adds Black & Decker Inc. as an alleged discharger.

III. The Date the Regional Board Acted.

The date of the Regional Board Executive Officer's issuance of the Amended Order is December 2, 2005.

IV. Statement of the Reasons the Action is Inappropriate and Improper.

A. The Order is barred by the doctrine of collateral estoppel and res judicata by virtue of Regional Board Resolution No. R8-2003-0070 dated May 16, 2003 in the matter of Cleanup and Abatement Order No. R8-2002-0051.

B. As regards separate petitioner Emhart Industries, Inc., the Executive Officer failed to comply with the claims requirement of the Connecticut Business Corporations Code Act § 33-887.

C. The "findings of fact" set forth in the December 2, 2005 Amended Order are contrary to the evidence based upon a preponderance of the evidence in the record.

D. Black & Decker Inc. is not a "corporate successor" to the alleged liabilities of West Coast Loading Corporation and/or of Kwikset Locks Inc. and/or Kwikset Corporation and/or Emhart Industries, Inc. and/or Black & Decker (U.S.) Inc.

E. Water Code §§ 13267 and 13304 may not be applied retroactively to parties which ceased to exist prior to those statutes' enactment.

F. The Amended Order is arbitrary and capricious in that it seeks to impose upon a single entity investigative cleanup and abatement and alternative water supply obligations for actions or failures to act by multiple parties as evidenced by the Regional Board's administrative record.

G. Petitioner does not now have nor has it ever had a possessory interest in the property which is the subject of the Amended Order and thus has no right, power or duty to conduct the actions required by the Amended Order.

H. The Order is subject to a Plea in Abatement in that the gravamen of the Amended Order, i.e., (a) whether West Coast Loading Corporation ("WCLC") discharged perchlorate to waters of the state, and, if so, (b) whether Petitioner is statutorily obligated to WCLC or any other party for such alleged liability as is presently the subject of litigation, including consolidated cases pending in the U.S. District Court, Central District of California, Eastern Division, in Riverside, California. (*City of Rialto v. U. S. Department of Defense, et al.*, Case No. 04cv00079.)

I. On February 10, 2005, Emhart Industries, Inc. provided Regional Board staff a Field Investigation Report prepared by ENVIRON International at the request of USEPA and in consultation with Regional Board staff which concludes the former WCLC facility is not a source of contamination in the Rialto/Colton groundwater basin.

J. The Regional Board has not conducted an evidentiary hearing complying with minimal constitutional due process requirements on the allegations set forth in the Amended Order.

K. Black & Decker Inc. is a Delaware Corporation which does not do business in California and which is not subject to the Regional Board's jurisdiction under Water Code Sections 13254 and 13304.

V. Petitioner is Aggrieved.

Petitioner is aggrieved for the reasons set forth in paragraphs III and IV above.

VI. Petitioner's Requested Action by the State Board.

Petitioner respectfully requests that the State Board provide a full and impartial evidentiary hearing on the Amended Order pursuant to the United States Constitution, the California Constitution, Water Code § 13320, 23 CCR § 648 et seq. and Government Code § 11400 et. seq., after full opportunity for discovery, and rescind the Amended Order. This petition for review and request for hearing is requested to be held in abeyance by the State Board pending further actions, if any, by the Executive Officer or the Regional Board.

VII. Statement of Points and Authorities.

Petitioner will provide a detailed statement of points and authorities in the event the Executive Officer or the Regional Board take further action which necessitate Petitioner requesting the State Board to convert this petition to active status.

VIII. List of Interested Persons.

A list of "interested persons" is attached to the Amended Order attached here to as Exhibit A.

IX. Statement of Transmittal of Petition to the Regional Board.

A copy of this petition has been transmitted to the Executive Officer of the Regional Board on December 29, 2005.

X. Request to Regional Board for Preparation of the Administrative Record.

By copy of this amended petition to the Executive Officer of the Regional Board, Petitioner hereby requests the preparation of the administrative record herein.